Supreme Court, U.S.
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No. 93-304

In The

Supreme Court of the United States

October Term, 1993

SANFORD REDMOND, INC.,

Petitioner,

v.

MID-AMERICA DAIRYMEN, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

WAYNE H. HOECKER
(Counsel of Record)
GAGE & TUCKER
2345 Grand Avenue
P.O. Box 418200
Kansas City, MO 64141
(816) 292-2000

JOHN COLLINS
JILL D. SINGER
HOVEY, WILLIAMS, TIMMONS & COLLINS
1400 Mercantile Tower
1101 Walnut
Kansas City, MO 64106

Attorneys for Respondent Mid-America Dairymen, Inc.

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RULE 29.1 STATEMENT

The Respondent is Mid-America Dairymen, Inc., an agricultural marketing cooperative organized and existing under the laws of the State of Kansas. It is a membership corporation. It currently has approximately 9,000 dairy farmer members. It has an ownership interest in the following corporations and partnerships: Golden Harvest Popcorn; Defcal, Inc.; Raber Foods, Inc.; Golden Valley Cheese; Western Quality Foods, L.C.; Hiland Dairy Foods Company; Roberts Dairy Company; National Bank of Cooperatives; Prairie Farms Dairy, Inc.; Challenge Dairy Products Company and Land O'Lakes, Inc. None of these companies have investor ownership.

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MEMORANDUM OPPOSING CERTIORARI

The facts in this case do not support the Questions Presented. Pet. (i). This case involved (1) the existence of trade secrets in leased machines, and (2) the enforceability of non-negotiable contracts requiring payment of unabated, use-based royalties extending beyond the life of the patent.

First, the courts below ruled there were no trade secrets. Pet. App. 14a-15a. Petitioner does not challenge this finding.

Second, there is nothing to support Petitioner's new unjust enrichment theory; e.g., "a valuable machine"

being used (Pet. 7) or "a staff of qualified service engineers" (Pet. 8). The uncontroverted evidence is that Mid-America never used the machines. The machines were removed from a plant in Arkansas and stored in a garage adjacent to a plant in Oklahoma City until Redmond would accept their return.

Brulotte v. Thys Co., 379 U.S. 29 (1964) declares agreements requiring post-patent expiration, unabated use royalty provisions illegal *per se*.

CONCLUSION

Petitioner's attempt to collect royalties on an expired patent is unlawful *per se*. The courts below so ruled. The petition for a writ of certiorari should be denied.

WAYNE H. HOECKER
(Counsel of Record)
GAGE & TUCKER
2345 Grand Avenue
P.O. Box 418200
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1400 Mercantile Tower
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Attorneys for Respondent
Mid-America Dairymen, Inc.